IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 30650 of 2007(W)

PETITIONER:

S.S. JOHN,
PROPRIETOR, M/S. ZONATE FURNITURE MART,
VANDITHADAM, VELLAYANI P.O., TRIVANDRUM.

BY ADV. SRI.M.RAMASWAMY PILLAI

RESPONDENTS:
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1. STATE BANK OF TRAVANCORE,
VELLAYANI BRANCH, VELLAYANI REPRESENTED BY ITS MANAGER, STATE BANK OF TRAVANCORE, PUJAPPURA, TRIVANDRUM.

2. THE MANAGING DIRECTOR,
STATE BANK OF TRAVANCORE, PUJAPPURA, TRIVANDRUM.

BY STANDING COUNSEL
SRI.R.S.KALKURA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 30650 OF 2007 W
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Dated this the 15th November, 2007

J U D G M E N T

The admitted facts of this case are that the petitioner had mortgaged his property for availing of certain loans from the Bank as is evident from Ext. P1. Default was committed and the Bank had filed a suit for recovery of the amount. Though the suit was decreed and execution was taken, in the meanwhile the petitioner paid off the liability to the Bank in full. Thereafter the petitioner demanded return of the documents deposited by him in the Bank. But the Bank did not concede to the request and hence this writ petition was filed praying for a direction to the Bank to return the original documents deposited by the petitioner for the loan covered by the decree in O.S. No. 242/88.

2. In the counter affidavit, the Bank would state that following the remittance made by the petitioner to satisfy the decree, Bank had made application to the

court for return of the documents, when it was revealed that the counsel appearing for the Bank in the case had already received the documents. The Bank has also placed on record a communication received from the counsel which is to the effect that the documents were already handed over to yet another person for obtaining the valuation certificate. According to the counsel for the Bank what is stated in Ext. R1(e) was incorrect.

3. Counsel for the Bank says that notices were issued to the counsel, but as matters now stand, the documents have not been traced out by the Bank for handing over the same to the petitioner. The Bank had also issued a letter to the petitioner intimating him that they are willing to obtain a certified copy of the title deed at their cost and also issue a certificate that the bank is having no charge or interest over the property since the decree stood satisfied.

4. Quite naturally, the petitioner is not satisfied with this. Petitioner submits that if the original documents are not available with the Bank the Bank should at least execute a release deed so that he

will have a pucca document which will also prove that there is no liability to the Bank.

5. I have considered the submissions made by both sides. It need not be stated that when liability of the petitioner to the Bank is cleared, the Bank is under obligation to return the document to the person who has deposited the same. In this case, whatever be the justification that is offered by the Bank, it is the admitted position that the Bank is not in a position to return the documents to the petitioner. In such circumstances, the petitioner is perfectly justified in demanding that at least he should be given a release deed. Though the Bank is reluctant because of the cost involved, I do not see any justification in the attitude of the Bank. Therefore, I direct that the respondent Bank shall execute a release deed in favour of the petitioner. This shall be done as expeditiously as possible, at any rate within one month of receipt of a copy of this judgment.

Counsel for the petitioner also submits that if by making use of the title deeds anybody else has created any charge over his property, that should also be made

good by the respondent Bank. This is purely anticipatory and in this proceedings I do not wish to pass any order in this respect. But I leave open the contentions raised by the petitioner in this regard.

Writ petition is disposed of as above.

ANTONY DOMINIC
JUDGE

jan/-